

§ 21.3

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who must use annual leave or leave without pay to appear as a witness may retain an attendance fee which he or she receives.

§ 21.3 Aliens.

(a) *Aliens entitled to payment of \$30 per day.* The following aliens are entitled to witness fees and allowances provided in § 21.4:

(1) Aliens lawfully admitted for permanent residence (documentary evidence: Form I-151 or Form I-551, Alien Registration Receipt Card);

(2) Aliens lawfully admitted in one of the nonimmigrant categories described in 8 U.S.C. 1101(a)(15) (documentary evidence: unexpired Form I-94, Arrival-Departure Record). But see below § 21.3(b);

(3) Aliens admitted as refugees under 8 U.S.C. 1157 and aliens granted asylum under 8 U.S.C. 1158 (documentary evidence: Form I-94, Arrival-Departure Record, indicating admission as refugee under 8 U.S.C. 1157 or granting asylum under 8 U.S.C. 1158, employment authorized);

(4) Aliens who have rendered themselves amenable to deportation proceedings, but have not admitted deportability or have not been determined to be deportable pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(b) *Aliens entitled to payment of \$1 per day.* An alien who is “excludable” in accordance with 8 U.S.C. 1226, but whose removal is stayed by the Attorney General (in accordance with 8 U.S.C. 1227(d)) because:

(1) The testimony of the alien is necessary on behalf of the United States in the prosecution of offenders against the United States, or

(2) The testimony of the alien is necessary on behalf of an indigent criminal defendant in accordance with Rule 17(b) of the Federal Rules of Criminal Procedures,

is entitled to a \$1 per day witness fee. No other fees and allowances are authorized.

(c) *Aliens not entitled to payment.* An alien who has been paroled into the United States for prosecution pursuant to 8 U.S.C. 1182(d)(5) (documentary evidence: Form I-94, Arrival-Departure Record, Parole Edition), or an alien

who has admitted belonging to a class of aliens who are deportable, or an alien who has been determined pursuant to 8 U.S.C. 1252(b) to be deportable (documentary evidence: decision by a Special Inquiry Officer, Board of Immigration Appeals, or court), is prohibited from receiving fees and allowances in accordance with 28 U.S.C. 1821(e).

(d) *Doubtful cases.* If the Immigration and Naturalization Service advises that the alien has admitted deportability, or that he or she was paroled into the United States for prosecution, or that deportation proceedings have been completed against the alien with a result favorable to the Government, no payment under 28 U.S.C. 1821 may be made.

§ 21.4 Fees and allowances of fact witnesses.

The fees and allowances of fact witnesses, other than those covered by § 21.2, attending at any judicial proceeding, shall be as follows:

(a) *Fee.* A witness shall be paid an attendance fee of \$30 per day for each day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance. However, if both attendance and travel occur on the same day, a witness is entitled to only one fee.

(b) *Allowable transportation expenses.* A witness shall be entitled to transportation expenses based on the means of transportation reasonably utilized (based on the nature, duration, location and distance of travel) and the distance necessarily traveled from and to such witness’ residence by the shortest practical route and the fastest means of transportation available in going to and returning from the place of attendance. Additional costs incurred (including attendance fees and subsistence allowances) because of a slower means of transportation must be justified for consideration.

(1) A witness who travels by regularly scheduled common carrier shall be paid for the actual expenses of transportation at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

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(2) A witness who travels by privately owned vehicle shall be paid a transportation allowance equal to the mileage allowance paid for official travel of employees of the Federal Government under the provisions of 5 U.S.C. 5704. However, when two or more witnesses travel in the same privately owned vehicle, only the witness incurring the expense shall receive the mileage allowance.

(3) A witness incurring incidental transportation expenses, such as taxi fares between the place of attendance, residence or lodging and the carrier terminals; bridge, road and tunnel tolls; ferry fares; and parking fees shall be paid in full for such expenses. Receipts or other evidence of actual payment are required for *all parking fees* (if available) and all other single items costing more than \$25.

(4) First-class travel by witnesses requires the same justification and approval required for first-class travel by employees of the Federal Government.

(c) *Subsistence allowance.* A witness (other than a witness detained *in custody*) who is required to be away from his or her residence *overnight* is entitled to a subsistence allowance. A witness who *is not* required to be away from his or her residence *overnight* is *not* entitled to a subsistence allowance. The witness' subsistence allowance shall not exceed either the per diem rate or the actual subsistence allowance rate prescribed for Government employees for the place of attendance. These rates are established by the Administrator, General Services, for areas within the conterminous United States; the Secretary of Defense for areas of the United States other than conterminous; or the Secretary of State as published in the Standardized Regulations (Government Civilians, Foreign Areas) for foreign areas. The witness' subsistence allowance shall consist of a meal and miscellaneous expense portion and a lodging portion. *When an overnight stay is required*, the witness shall be entitled to:

(1) The meal and miscellaneous expense portion for each day (or partial day) the witness is required to remain away from his or her residence and

(2) The lodging portion for each night the witness is required to incur a lodging expense.

The meal and miscellaneous expense portion shall be 50% of the authorized subsistence allowance rate rounded to the next whole dollar in an actual subsistence rate area, or 45% of the per diem rate rounded to the next whole dollar in a per diem area. The lodging portion shall be the difference between the meal and miscellaneous expense portion and the authorized rate.

(d) *Detained witness fee.* A witness (other than an alien covered by §21.3) detained *in custody* pursuant to 18 U.S.C. 3149 for want of security for his or her appearance shall receive subsistence *in kind* and shall be paid a single daily attendance fee for each day the witness is detained. A witness in custody for purposes other than 18 U.S.C. 3149 is ineligible to receive the attendance and subsistence fees provided by this section.

§21.5 Use of table of distances.

Mileage payable to witnesses under 28 U.S.C. 1821 shall be computed on the basis of odometer readings or the highway distances as stated in the Rand McNally Standard Highway Mileage Guide or in any generally accepted highway mileage guide which contains a shortline nationwide table of distances. However, with respect to travel in areas for which no such highway mileage guide exists, mileage payable under 28 U.S.C. 1821 shall be based on the lesser of either (a) the route of travel actually employed or (b) a usually traveled route.

§21.6 Proceedings in forma pauperis.

Title 28 U.S.C. 1915 provides for the commencement, prosecution or defense of any suit, action, or proceeding without prepayment of fees and costs. Witnesses shall attend as in other cases.

(a) *Civil cases.* There are currently no provisions for payment of witnesses called by the indigent. If the indigent party prevails, witness fees and expenses may be taxed as costs in accordance with 28 U.S.C. 1920.

(b) *Criminal cases.* Rule 17(b), Federal Rules of Criminal Procedure, requires that fact witnesses *subpoenaed* on behalf of an indigent defendant be paid in